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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
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THE STATE OF ARIZONA, Appellee, v. JON EDWARD ERICKSON, Appellant.	)	2 CA-CR 2010-0012 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200100103

Honorable Wallace R. Hoggatt, Judge

AFFIRMED

Tom Horne, Arizona Attorney General
By Kent E. Cattani and Joseph L. Parkhurst — Tucson
Attorneys for Appellee

Harriette P. Levitt — Tucson
Attorney for Appellant

H O W A R D, Chief Judge.

¶1 In this appeal from his first-degree murder conviction, appellant Jon Erickson argues there was insufficient evidence of premeditation to sustain the conviction. Finding no error, we affirm.

Background

¶2 "We view the facts in the light most favorable to sustaining the convictions." *State v. Robles*, 213 Ariz. 268, ¶ 2, 141 P.3d 748, 750 (App. 2006). Erickson met S., the victim in this case, in 2000 and she moved into his home within a month. Erickson testified at trial that, after moving in, S. had been involved in drug use and "partying." He testified that as a result he had asked S. to leave, only to allow her back days later, and that this cycle had gone on repeatedly. In January 2001, after Erickson had spent a week with his wife, from whom he was separated, S. wrote him a letter demanding that he choose between her and his wife. Erickson testified he had refused to make a choice but had told S. she would have to move out.

¶3 On February 2, 2001, Erickson's neighbors called 9-1-1 after finding him outside with blood on his clothing and hands. When emergency personnel arrived, Erickson was "combative" but did not have any injuries. Sheriff deputies initially assumed Erickson had been the victim of a stabbing and went to Erickson's home to conduct a "welfare check." As they approached, they could see through the open front door, S. face-down on the floor and covered in blood. She was pronounced dead and an autopsy determined she had sustained at least thirty stab wounds, three of which were potentially fatal.

¶4 When interviewed by a detective the next day, Erickson initially stated the blood on his clothing had come from a deer he had killed and skinned. But after he was informed that S. was dead, he stated "it was self-defense." He explained that S. had tried

to kill him by "practicing witchcraft on him" and "crushing his heart" and that he had to kill her. He stated he had stabbed her ten to fifteen times.

¶5 The state charged Erickson with first-degree murder and a jury found him guilty as charged.[1] The trial court imposed a term of natural life without the possibility of parole and this appeal followed.

Discussion

¶6 In the sole issue raised on appeal, Erickson argues the evidence presented against him was insufficient to sustain his first-degree murder conviction. "We review the sufficiency of evidence presented at trial only to determine if substantial evidence exists to support the jury verdict." *State v. Stroud*, 209 Ariz. 410, ¶ 6, 103 P.3d 912, 913 (2005). "Substantial evidence is more than a mere scintilla"; it is evidence that would permit a reasonable jury to conclude beyond a reasonable doubt that the defendant committed the charged offense. *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). "To set aside a conviction because of insufficient evidence, 'it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the [trier of fact].'" *State v. Carlisle*, 198 Ariz. 203, ¶ 11, 8 P.3d 391, 394 (App. 2000), *quoting State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987).

¶7 Erickson maintains the state failed to present any evidence of premeditation and the evidence instead was "consistent with [his] version of the events," in which he claimed he had not meant to kill S. and had acted only to defend himself when S. attacked him with a knife. A person commits first-degree murder if, "[i]ntending or

[1]The state also originally charged Erickson with possession of marijuana and possession of drug paraphernalia, but those charges ultimately were dismissed upon the state's motion.

knowing that the person's conduct will cause death, the person causes the death of another person . . . with premeditation." A.R.S. § 13-1105(A)(1).

> "Premeditation" means that the defendant acts with either the intention or the knowledge that he will kill another human being, when such intention or knowledge precedes the killing by any length of time to permit reflection. Proof of actual reflection is not required, but an act is not done with premeditation if it is the instant effect of a sudden quarrel or heat of passion.

A.R.S. § 13-1101(1).

¶8 Premeditation can "be proven by circumstantial evidence; like knowledge or intention, it rarely can be proven by any other means." *State v. Ramirez*, 190 Ariz. 65, 69, 945 P.2d 376, 380 (App. 1997). And a trier of fact may consider all circumstances and facts of an offense. *See State v. Thompson*, 204 Ariz. 471, ¶ 31, 65 P.3d 420, 428 (2003). This may include the fact that the murder was "protracted, brutal, and involved a sustained attack on the victim." *State v. Gulbrandson*, 184 Ariz. 46, 65, 906 P.2d 579, 598 (1995). Ultimately, "[t]o establish premeditation, 'the state must prove that the defendant acted with either the intent or knowledge that he would kill his victim and that such intent or knowledge preceded the killing by a length of time permitting reflection.'" *State v. Ellison*, 213 Ariz. 116, ¶ 66, 140 P.3d 899, 917 (2006), *quoting State v. Murray*, 184 Ariz. 9, 32, 906 P.2d 542, 565 (1995).

¶9 Here, the medical examiner testified S. had sustained a stab wound to her right eye that had collapsed the eye and lacerated the brain. He explained this wound alone would have caused S. to "immediately . . . collapse[] and lose consciousness." She also had received a wound approximately three inches deep through her nose and sinus and stab wounds that penetrated into her larynx and carotid artery. The wound to her

carotid artery would have caused a loss of consciousness as well. The deepest wound the examiner found was to her back and went about four inches deep, puncturing her lung. She also had multiple contusions and other stab and slash wounds to her back, arms, chest, neck and head. The examiner further testified S. had defensive wounds on her hands which likely had been caused by her attempts to deflect or grab the weapon used to attack her. He also stated that S.'s injuries suggested there had been "a lot of movement going on" at the time she sustained her wounds.

¶10 In view of this testimony the jury reasonably could conclude Erickson had acted with premeditation, both because of the nature of the assault on S., *see Gulbrandson*, 184 Ariz. at 65, 906 P.2d at 598, and because of the time required to complete such an assault, *see State v. Thompson*, 204 Ariz. 471, ¶ 33, 65 P.3d 420, 429 (2003) (state may argue passage of time suggests premeditation). Additionally, Erickson did not have any injuries, "a significant fact inconsistent with his [self-defense] story and inferentially consistent with a theory of premeditation." *State v. Lopez*, 158 Ariz. 258, 262-63, 762 P.2d 545, 549-50 (1988).

¶11 Furthermore, in statements he made to a police officer while at the hospital, Erickson stated: "I am a person who can give life and take life away." And he told the detectives who interviewed him that he had to kill S. because she had been "practicing witchcraft on him, . . . sucking the life out of him, . . . [and] crushing his heart." When asked how he had killed S., he stated he had stabbed her ten to fifteen times. From this evidence the jury reasonably could conclude Erickson had known he would kill S. and had reflected upon doing so in advance of her death. *See* § 13-1101(1).

¶12 Erickson argues, however, "[a]ll of the evidence is consistent with a finding of either second[-]degree murder or manslaughter," rather than premeditated, first-degree

murder. But the fact that some of the evidence presented also might have been consistent with Erickson's self-defense theory does not preclude a reasonable jury from concluding he had acted with premeditation. *See State v. Riggins*, 111 Ariz. 281, 284, 528 P.2d 625, 628 (1974) ("Evidence is not insubstantial simply because the testimony is conflicting or reasonable persons may draw different conclusions therefrom."). In sum, the state presented sufficient evidence to support the jury's conclusion that Erickson had committed premeditated, first-degree murder and we will not set aside his conviction. *See Carlisle*, 198 Ariz. 203, ¶ 11, 8 P.3d at 394.

Disposition

¶13 Erickson's conviction and sentence are affirmed.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge